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THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-06-02-2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K. SAMPATHKUMAR

Habeas Corpus Petition No. 86 of 2006

Viruthagiri.
Virudhachalam .. Petitioner.

Vs.

1. The Inspector of Police,
   Virudhachalam.

2. Manikandan. .. Respondents.

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the respondents to produce the detenu Minor Varsha, 3 years old, before this Court and to entrust the custody of the minor Varsha to the petitioner herein.

Mr. R. Sankara Subbu:- For petitioner.
Mr. M.K. Subramanian, Govt., Advocate (Crl. side):- For 1st respondent.

ORDER

(Order of Court was made by P. Sathasivam, J.,)

The petitioner Viruthagiri has filed this petition seeking direction to the respondents for production of minor Varsha, 3 years old, before this Court and to entrust the custody to him in order to secure the ends of justice.

2. It is seen from the affidavit filed in support of the above petition, the petitioner's son by name Suresh fell in love with one Saravanammal alias Rosy and they got married in 2002. It was an inter-caste marriage. Out of the said wedlock, a child by name Varsha was born to them, and the petitioner's son Suresh secured employment in Dubai and gone there left his wife Saravanammal and the child in the custody of the petitioner in the

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year 2003. According to him, the petitioner is the guardian of the child Varsha. Due to absence of his son, his daughter-in-law committed suicide on 1-10-2005. The second respondent is the brother of the deceased Saravanammal @ Rosy. It is stated that taking advantage of his illness, the second respondent kidnapped his grand-daughter Varsha without his consent and knowledge. The same was reported to the first respondent. In the absence of proper action by the first respondent, according to the petitioner, having no other remedy, filed the present petition invoking jurisdiction under Article 226 of the Constitution of India.

3. It is not in dispute that the mother of the detenu is no more. Even according to the petitioner, his daughter-in-law committed suicide. Admittedly, his son is employed at Dubai. It is also seen from the materials placed, as on date, the child aged about 3 years is with the second respondent though her father is the natural guardian. As said earlier, admittedly, her father is not in India and employed in Dubai. In the light of the controversy and claim between the petitioner and the second respondent, we are of the view that the same cannot be resolved in a Habeas Corpus Petition. The petitioner is free to move the appropriate Court for custody of his grand daughter. With this observation, this petition is dismissed.

R.B.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Inspector of Police,
Vridhachalam Police Station,
Cuddalore District.

2. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.R.Sankarasubbu, Advocate, SR.5221.

Order in
H.C.P.No.86 of 2006

AKM(CO)
RVL 17.02.2006

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